

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-757/96
with
OA-766/96
OA-853/96
OA-919/96

New Delhi this the 11th day of April, 1997.

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Sh. S.P. Biswas, Member(A)

OA-757/96

Shri Mangat Ram,
C/o Shri Rajendra Mahajan,
H.No.2742, Gali No.13A,
Ranjit Nagar, Patel Road,
New Delhi. Applicant

(through Sh. N. Ranganathaswamy, advocate)

versus

1. Union of India through
Ministry of Finance,
North Block, New Delhi.
2. The Financial Adviser,
Defence Services,
Ministry of Defence(Finance),
South Block,
New Delhi.
3. The Controller General of Defence,
Accounts, West Block V,
R.K. Puram,
New Delhi-66. Respondents

(through Shri K.R. Sachdeva, advocate)

OA-766/96

Shri N.P. Jain,
P-118, Chitrangan Park,
New Delhi-110019. Applicant

(through Sh. N. Ranganathaswamy, advocate)

versus

1. Union of India through
Ministry of Finance,
North Block, New Delhi.
2. The Financial Adviser,
Defence Services,
Ministry of Defence(Finance),
South Block,
New Delhi.

(10)

3. The Controller General of Defence,
Accounts, West Block V,
R.K. Puram,
New Delhi-66. Respondents

(through Sh. K.R. Sachdeva, advocate)

OA-853/96

Shri T.P. Singh Harit,
C/o Dr. Chand Raka Rajesh,
A-40, Kunian Nagar,
P.O. Laxmi Nagar,
New Delhi-92. Applicant

(through Sh. N. Ranganathaswamy, advocate)

versus

1. Union of India through
Ministry of Finance,
North Block, New Delhi.
2. The Financial Adviser,
Defence Services,
Ministry of Defence(Finance),
South Block,
New Delhi.
3. The Controller General of Defence,
Accounts, West Block V,
R.K. Puram,
New Delhi-66. Respondents

(through Shri K.R. Sachdeva, advocate)

OA-919/96

Shri Hari Singh,
C/o Shri Bhopal Singh,
681/27, Palam Colony,
New Delhi. Applicant

(through Sh. N. Ranganathaswamy, advocate)

versus

1. Union of India through
Ministry of Finance,
North Block, New Delhi.
2. The Financial Adviser,
Defence Services,
Ministry of Defence(Finance),
South Block,
New Delhi.
3. The Controller General of Defence,
Accounts, West Block V,
R.K. Puram,
New Delhi-66. Respondents

(through Sh. K.R. Sachdeva, advocate)

ORDER

delivered by Hon'ble Sh. S.P. Biswas, Member(A)

The facts of the cases, issues raised, reliefs sought for and the questions of law involved in these 4 O.A.s are identical and hence they are being disposed of by a common order. For the sake of convenience, the facts and circumstances as in OA-919/96 are being referred to herein for better appreciation of the issues.

2. The applicant in OA-919/96 was promoted to the post of Senior Accounts Officer in the month of March, 1994 but the promotion was made retrospectively from 1.4.1987 in the scale of Rs.2200-4000/- (Revised). Whereas with effect from 17.1.1990, the applicant was directed to work as Group Officer (Senior Time Scale Officer) in the scale of Rs.3000-4500/- He carried out the responsibilities till he retired on 31.1.1996. The applicant in OA-757/96 was promoted as Senior Accounts Officer in the month of January, 1993 and the promotion herein was also ordered retrospectively from 1.4.1987 in the scale of Rs.2200-4000/- (Revised). Although promoted as Class-I officer with effect from 9.8.1994 in the scale of Rs.2200-4000/-, the applicant was directed to work as Group Officer (Senior Time Scale) in the grade of Rs.3000-4500/- He retired from service on 31.8.1995. Accordingly, he claims pay and allowances for carrying out responsibilities of a higher post from 9.8.94 to 31.8.95. The applicant in OA-766/96 was promoted as Senior Accounts Officer in the month of January, 1994. His promotion was also ordered retrospectively from 1.4.1987 in the scale of

Rs.2200-4000/- (Revised). He was further promoted as Dy. CDA in the scale of Rs.3000-4500/- with effect from 26.3.1992. He thus carried out the responsibilities of the higher post from 26.3.1988 to 25.3.1992 and is claiming pay and allowances as admissible for the higher post of Group Officer. The applicant in OA-838/96 has claimed pay and allowances as admissible to Group Officer for the period from 1.4.1988 to 31.12.1995, during the period when he had carried out the responsibilities and duties attached to the post of Group Officer.

3. It is the case of all the applicants that they were all ordered to carry out duties and responsibilities of higher posts and they did so satisfactorily for over a period varying from 2 to 4 years without any interruption. All of them would claim that the denial of higher pay would result in unjustified discrimination and is, therefore, violative of the principles enshrined in Articles 14 & 16 of the Constitution. In support of their contentions, the applicants have relied on the decision of this Tribunal in the case of K.S. Rangaswamy Vs. U.O.J. & Ors. (OA-2356/93) decided on 28.11.1994 wherein the respondents were directed to pay the applicant therein the salary and allowances applicable to the higher post as the applicant had discharged his duties on orders. It is the further claim of the applicants that while directing the applicants to work as Group Officer, neither any condition was imposed nor any undertaking

was taken from them that they would not be paid pay and allowances applicable to higher posts. Under these circumstances, it does not lie in the mouth of the respondents to take away the rights of the applicants in respect of benefits for working in posts carrying higher grades.

4. The respondents, on the contrary, have opposed the reliefs prayed for. It has been submitted that the applicant in (OA-919/96) was directed purely on working arrangement basis to hold the charge of a higher post which as a matter of rule is **expected** of a Dy. CDA in the Senior Time Scale of Rs. 3000-4500/- . This cannot form the legal basis for being placed in the Senior Time Scale of Rs. 3000-4500/-, the respondents would contend. Traditionally, Accounts Officers on promotion to the grade of Asstt. Controller of Defence Accounts are asked to discharge the duties of Group Officers post even though by virtue of their appointments they draw pay and allowances of the Junior Time Scale and are kept on probation for a period of two years. As per respondents, the steps taken were as a part of one time measure where some officers were appointed as temporary Dy. CDA from the grade of Accounts Officer. It has also been submitted that they could be reverted to the lower scale at any time.

5. As per respondents, the matter stands referred to High Court of Delhi through "Letters patent appeal" (LPA) which is still pending decision at the level of the High Court and hence it has been pleaded that this Tribunal may await the decision from the High Court. The respondents further contended that the judgement pronounced by the Principal Bench in the case of S.-Rangaswamy could be made applicable to the applicant therein only. The counsel argued that in the case of P. Makkar Vs. U.O.I., the Principal Bench have allowed the relief only provisionally with a stipulation that the same could be liable to be refunded in case the verdict of the Hon'ble High Court of Delhi in LPA-50/81 goes in favour of the State. This is notwithstanding the fact that in the case of Rangaswamy, the same Bench had allowed the relief on final basis. Once the Hon'ble High Court of Delhi is seized of the matter, deciding identical issues during the pendency of that LPA (No.50/81) would tantamount to rendering the LPA redundant, argued the learned counsel for the respondents. The respondents have not gone in appeal to the Hon'ble Supreme Court against the orders of this Tribunal (in OA-2356/93 decided on 20.11.94) due to pendency of LPA in High Court of Delhi. The respondents contended further that none of the applicants were formally appointed to the higher posts of Group Officers.

6. It is not in dispute that none of them were appointed as Group Officer on regular basis. At the same time, the respondents have not denied having taken

the work of Group Officers from the applicants during the period mentioned against each. We find no justification on record to show as to why under the circumstances of the cases, the procedure laid down under Rule FR 49 could not be followed. The relevant portion of the above rule is reproduced below:-

"F.R. 49. The Central Government may appoint a Government servant already holding a post in a substantive or officiating capacity to officiate, as a temporary measure, in one or more of other independent posts at one time under the Government. In such cases, his pay is regulated as follows:-

- (i) where a Government servant is formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, he shall be allowed the pay admissible to him, if he is appointed to officiate in the higher post, unless the competent authority reduces his officiating pay under Rule 35; but no additional pay shall, however, be allowed for performing the duties of a lower post;
- (ii) xxxxxx
- (iii) xxxxx

Provided that if in any particular case, it is considered necessary that the Government servant should hold charge of (another post) or posts for a period exceeding 3 months, the concurrence of the Ministry of Finance shall be obtained for the payment of the additional pay beyond the period of 3 months;

- (iv) where an officer is formally appointed to hold full additional charge of another post, the aggregate of pay and additional pay shall in no case exceed Rs.8000;

(v) no additional pay shall be admissible to a Government servant who is appointed to hold current charge of the routine duties of (another post) or posts irrespective of the duration of the additional charge;

(vi) if compensatory or sumptuary allowances are attached to one or more of the posts, the Government servant shall draw such compensatory or sumptuary allowances as the Central Government may fix:

Provided that such allowances shall not exceed the total of the compensatory and sumptuary allowances attached to all the posts."

7. The applicants have made repeated representations claiming higher pay and allowances for the period they have carried out higher responsibilities but the respondents decided to turn a Nelson's eye on those representations.

8. We find some force in the contention of the learned counsel for the applicant. There are several decisions of the Hon'ble Supreme Court ordering emoluments payable to an employee working on a higher post, though not on regular basis. In fact, the learned counsel invited our attention particularly to the decisions reported in Randhir Singh Vs. Union of India and others (AIR 1982 SC 879); Surinder Singh and another Vs. Engineer, CPWD and another (AIR 1986 SC 584) and Dhirendra Chamoli Vs. State of U.P. ((1986) 1 SC 637), to support his contention. These decisions take the view that a person though not regularly appointed to a post is eligible for the remuneration payable to a regular employee in the post, if he has

discharged the duties thereof. There is no dispute that applicants had discharged the duties of higher posts. We think that the decisions cited by applicant squarely govern the case and that the benefits available under the Government order, dated 7.6.1988, issued pursuant to the decision in Surinder Singh's case (supra), should govern the case on hand. During the course of hearing, it was fairly conceded by the respondents' counsel that some of applicants have been already paid officiating allowance for working in higher grades.

9. We further find that the decisions in OA-1737/89 are squarely applicable to the facts and circumstances of this case. As reported in that OA, the Apex Court was examining the ratio arrived at by the New Bombay Bench of this Tribunal in OA-294/86 cited in the case of R. Srinivasan Vs. U.O.I. & Ors. 1994(1) ATJ Vol.16 232. In that case (OA-294/86) the applicants were shouldering higher responsibilities of officer of Grade-II but denied emoluments for the said post. It was observed that inasmuch as the applicants have not given in writing that they would not claim any extra remuneration, they would be entitled to such payments as per rules. That judgement has become final since the appeal filed by the respondents against the said judgement in the aforesaid OA was dismissed by the Hon'ble Supreme Court by an order dated 2.8.1991 (emphasis added).

10. In the background of the reasons aforesaid, the applications succeed on merit and we allow the same with the following directions:-

(i) The respondents shall make payments of salary and allowances for the higher posts held by the applicants i.e. the difference of salary and allowances due for higher posts less the amounts they received on this account against the lower posts or justifiable amount of honorarium only for the period they had actually performed the duties of Group Officers/higher posts within a period of three months from the date of receipt of a certified copy of this judgement alongwith interest at the rate of 10% from the date of payable till the date of payment. In the absence of reliable evidence as regards the applicants' seniority/eligibility for higher posts, we do not think we would be justified in ordering pensionary benefits.

11. The applications are disposed of, as aforesaid. No costs.

(S.P. Bawas)
Member(A)

(Dr. Jose P. Verghese)
Vice-Chairman(J)

/vv/

Attested
KSL
C/C-II
17/11/97